

The Service Occupation Tax is a tax imposed upon servicemen engaged in the business of making sales of service in this State, based on the tangible personal property transferred incident to sales of service. See 35 ILCS 115/3. (This is a GIL.)

November 3, 2004

Dear Xxxxx:

This letter is in response to your letter dated June 18, 2004 in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

A client of ours ('the retailer') has inquired about the imposition of use tax on the distribution of catalogs to residents of Illinois from a location outside of the state. As you are no doubt aware, the Supreme Court's decision in *D. H. Holmes Co. v. McNamara*, 486 U.S. 24 (1988) upheld the imposition of a state use tax upon catalogs distributed in Louisiana from outside the state by a company with nexus in the state. It appears, however, that there is no binding authority on the issue under Illinois law. Illinois sales and use tax statutes do not squarely address the question, and no Illinois court has decided the issue. We note that the Department of Revenue has recently opined, in non-binding General Information Letters, that a company that directs the distribution of catalogs to recipients in Illinois from a location outside the state has not exercised a taxable use of the catalogs in the state for purposes of Illinois law, because the company has not assumed power or control over the catalogs in the state. See, e.g. ST 01-0003-GIL (Jan. 5, 2001); ST 01-0166-GIL (Aug. 17, 2001).

As I trust you can understand, absent authority binding upon the Department and in light of *D.H. Holmes*, the retailer we represent is uncertain of its use tax obligations on catalogs distributed directly to residents in the state of Illinois from locations outside the state, and desires clarification of its tax obligations so that it may comply with them. Please provide the Department's understanding with respect to the following:

1. Are catalogs created outside the state and delivered to residents in your state by mail or common carrier from locations outside the state subject to Illinois use tax?

A prompt reply concerning this basic question (citing relevant authority) would be appreciated. Assume for purposes of this inquiry that the retailer has nexus with Illinois.

If catalogs distributed via mail or common carrier from outside the State of Illinois are subject to use tax, please also address the following questions concerning the proper measure of the tax. (If responding to these additional questions will delay your reply to question 1, please respond first to question 1 and send your response to questions 2(a)-(g) separately at a later time.)

2. What is the tax base for determining the applicable use tax? In other words, how does one determine the taxable value of the catalogs under Illinois law? Specifically, are the following items included in the tax base:
  - (a) Pre-press activities such as consulting services, photography, graphic design, and art design;
    - (i) Does the applicability of the tax depend upon whether any pre-press services are provided by the same company that provides the printing services?
    - (ii) Does the applicability of the tax depend upon whether the pre-press services are separately stated or billed by the printing company?
    - (iii) What if the services are performed in-house by the company distributing the catalogs?
  - (b) Separations;
    - (i) Does it matter whether the separations are performed by the printer or are instead performed by a separate company?
  - (c) Paper costs;
    - (i) Does it matter whether the paper is purchased from the printer or is supplied separately by the company distributing the catalogs?
  - (d) Other materials costs (e.g., ink, printing plates, etc.)
  - (e) Typesetting and printing services;
  - (f) Costs of distributing the catalogs to bulk mail facilities;
    - (i) If paid by the printer and reimbursed, does it matter whether the charges for such distribution are separately stated by the printer?
    - (ii) What if the company directing the distribution pays for such distribution directly?
  - (g) Postage for delivery of the catalogs from the printer, or from bulk mail centers, to residents in your state;
    - (i) Does it matter whether the postage is separately stated by the printer or separately paid by the company distributing the catalogs?

Thank you in advance for your prompt attention to this manner. I look forward to your response.

**DEPARTMENT'S RESPONSE:**

The general information letters referred to in your letter (ST 01-0003-GIL and ST 01-0166-GIL) describe the Department's position for printed materials "used" outside Illinois and then placed for mailing by mail or common carrier outside Illinois for delivery into Illinois, and during which, the serviceman loses the ability to exercise control over the printed materials (e.g., to recall the materials). Generally, in the situations described in those letters, a serviceman would not incur Use Tax nor Service Use Tax liability if the serviceman does not retain the ability to exercise control over the shipment of the printed materials after entry into Illinois.

The general information letters described above also describe the general Use Tax and Service Use Tax liabilities of printers in special order printing situations. Such liabilities may accrue, if your client were to have any control over the printed materials in this State.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel

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